

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MTWARA)
AT MTWARA

CIVIL CASE NO 02 OF 2020

HARIDI ALLY LIMAMA..... PLAINTIFF

VERSUS

MASASI DISTRICT COUNCIL1ST DEFENDANT

THE BOARD OF TRUSTEES OF PUBLIC

SERVICE SOCIAL SECURITY FUND (PSSSF).....2ND DEFENDANT

THE ATTORNEY GENERAL 3RD DEFENDANT

JUDGMENT

Muruke, J

Haridi Ally Limama, (plaintiff) was employed by first defendant on the 1st day of July 1987, thus registered as member of former LAPF, Pension Fund, that later merged with others Pension Funds to become Public Service Social Security Fund (PSSSF), the second defendant.

In 2001, at the instance of first defendant plaintiff was charged with two counts of forgery of employer's document and stealing by Public Servant in Criminal case number 237 of 2001 at Masasi District Court, in which he was


1

acquitted. During pendency of criminal charges, plaintiff was suspended from employment on half salary pay, ultimately terminated on 12 September 2002. Following plaintiff termination, Masasi District Council wrote letter to the second defendant with instruction to close plaintiff account and pay plaintiff his contributions benefit.

Second Defendant (PSSSF) closed plaintiff account as instructed by Masasi District Council, calculated total contributions and drew a check of TZs 776,387.60 and handed over to the 1st defendant to pay plaintiff. Masasi District Council prepared voucher number PV 0018481, that was examined and approved on 31 day of October, 2003. Despite approval of the voucher, plaintiff was never paid, following his reinstated by the 1st defendant, vide letter dated 4th August 2003.

Plaintiff continued with his employment after being reinstated until compulsory retired on 7th January 2015, having attained age of sixty (60) years. Masasi District Council notified second Defendant on Plaintiff retirement, thus calculated his terminal benefits for 143 months, totaling sum of 8,262,222,222. Plaintiff was dissatisfied with the amount of 143 months, thus on 24 August 2015 he wrote a letter to the President Office Public Service Management and Good Governance, complaining on computation of his terminal benefits and denial of monthly pension payments.

Several corresponds between plaintiff with various institutions on the issue never beard fruits. Thus, filed present suit claiming for the following: -

- (a) An order for payment of terminal benefits to the tune of TZs 279,228,922.41 as 30th June 2017.



- (b) An order for payment of statutory interest rate of 5% per annum of the terminal benefits from 30th June 2017 up to the full payment.
- (c) An order for payment of monthly of monthly pension at the rate of Tzs 260,000/= from the retirement date up to the date of date of payment.
- (d) An order for payment of statutory interest rate of 5% per annum of the monthly pension from the retirement date up to the date of.
- (e) Any order for payment of monthly pension from the date of payment of prayer "c" above up to the death of the Plaintiff
- (f) Costs of the suit and
- (g) Any other reliefs this Honorable Court may deem fit and convenient to grant on the interest of justice.

After service and filling of WSD by both defendants, following issues were registered for determination by the court of law.

- (i) Whether Plaintiff was paid his Social benefits when terminated in year 2002.**
- (ii) Whether plaintiff was paid all his social benefits upon compulsory retirement in year 2015.**
- (iii) What reliefs are the parties entitled.**

On the cause of hearing, plaintiff was the only witness for his case, who tendered seven (7) exhibits, while defendants paraded 4 witnesses who also tendered total of seven (7) exhibits.

Throught pleadings it is not in dispute that the amount of 776,387.60 was received by 1st defendant, who was supposed to pay plaintiff.

According to the pleadings paragraph of 11 and 12 of the plaint, Haridi Ally Limama (Plaintiff) complained that, after termination by 1st defendant, voucher prepared by LAPF by then, for amount of 776,387,60 was sent to his employer first defendant but he was not paid. While being cross examined by Deogratious Kaijage in house lawyer and advocate for Masasi District Council he replied at page 27 of typed proceedings, that.

"In the voucher of 31/10/2003 voucher number PV 0017481 the amount is 776,387.60 Tshs. The voucher is in my name, but I was not paid. I did not sign in the voucher. Show me the check and Bank Statement, that proves that I took the amount of Tshs 776,387.60"

On the same point as to whether plaintiff was paid his benefit following his termination by 1st defendant, while being cross examined by Getruda Songoi State Attorney for 3rd defendant at page 31 to 32 of typed proceedings he replied that:

"I remember I wrote a letter Director to Masasi District Council. My payments were to pass through my employer. Voucher number PV 0017481 printed on 29/10/2003 and Voucher no PV 0017482 printed on 29/01/2003. The two voucher were printed on the same date. They were approved on 29/10/2003. Accounting code is the same. They were both for open check. I only received areas of salary generated while on suspension.", but not my earlier benefits from LAPF.

DW3 Makarious Paulo Kakema, internal Auditor working with first Defendant in examination in Chief led by his advocate Deogratius Kaijage he said at page 62 of typed proceedings that:

"Exhibit D2 is payment voucher. Haridi Limama is the payee. There is no name of the Bank. The voucher was for open cheque of 776,38760. Before

 4

me I have only payment voucher. The cheque is with the Bank. In open cheque, beneficiary can cash the same to the bank after showing "ID". After voucher, then cheque is drawn. It is not my business to know if holder of cheque has been paid. Claims by Harid Limama was 776,387.60. I did inspect and found that, Harid Limama was paid all his benefits. Normally we write checks and give to the beneficiaries. We submit vibutu/vishina to the bank. I have proof of payment voucher to Haridi Limama and nothing else".

From the evidence of plaintiff PW1 and DW3, first defendant Internal Auditor, there is no check issued to the plaintiff for payments of plaintiff contribution when terminated by first defendant. The only proof as said by DW3 is voucher. Cheque was defined in the case of *Sayi s/o Kapale Vs The Republic*, Criminal Appeal No. 85/2020 HC at Mwanza (unreported) that: -

"A cheque or check (American English) may simply be defined as a document that orders bank to pay a specific amount of money from person's bank account to the person in whose name the cheque is called the Drawer". The person in whose favour cheque is signed is called to "payee" and the bank which is directed to pay the amount is called the drawee".

In his final submission, plaintiff counsel, Marwa Masanda, submitted that, Exhibit D2, payment voucher, from first Defendant, is not substitute for proof of payments by cheque. Payment voucher is neither a demand nor an order for the bank to pay the plaintiff. I totally agree with plaintiff counsel. Payment voucher is a step towards preparation of a cheque, thus not proof of payments through banks.



In totality there is no evidence produced by first defendant to prove that plaintiff was paid Tshs. 776,397. 60, received from second defendant. Thus issue number one has been answered in the negative.

Issue number two: Whether plaintiff was paid all his social benefits upon compulsory retirement in year 2015. There is no dispute that, plaintiff was reinstated, on 2003 and retired on 2015. According to the evidence of DW2 **Victor Ananasia Kikoti**, PSSSF Inspection and compliance manager, plaintiff was entitled for payment of only 143 months, from 2003 to 2015 when retired. While being Cross examined by counsel for the plaintiff in the number of months' plaintiff supposed to be paid, he replied-

"Reality is from 2002 – 2015, it is a period of 13 years = 156 months thus 13 months has not been computed in paying terminal benefits. We don't have any evidence to prove that, 13 months was contributed for the same to be taken on board in computing plaintiff terminal benefit from 2003 to January 2015. If employer has not paid for contribution while he has deducted the amount, employer has to pay. LAPF was to informed the employer that there was problem so that Employer can ratify the problem. I have not brought any evidence to prove that, there was a problem of non-contribution by employer for 13 months".

From the evidence of DW2, there are 13 months left by the second defendant in calculating plaintiff benefits. He was only paid for 143 months instead of 156 months. It is obvious that, from 2003 – 2015 is a period of 13 years, which is equal to 156 months. Thus $156 - 143 = 13$ months.

Plaintiff retired on 7th January 2015. The amount 13 months pension has not been paid to the date of Judgment. By agreeing to contribute to the Pension

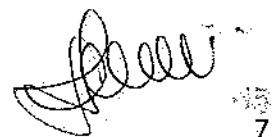


Fund, plaintiff created contractual obligations, that has been reflected by section 43 of PSSF Act, No. 2 of 2018, that specify payments to be made within 60 days from the date of retirement Plaintiff will thus be paid the amount of 13 months not considered with interest of his pension annually from January 2015 when retired to the date of judgment 29th June 2022. Thus, second issue has been answered in the negative that plaintiff was not paid all his benefit when retired in 2015.

From the evidence of PW1 (the plaintiff) tendered number of exhibits that includes several letters, from various institution dealing with pensions, and several communications with first defendant. Plaintiff has been moving up and down as demonstrated by exhibit P1 – P7, to the date of filing of this suit. All that plaintiff went through was un called for. It was expected things to go smoothly, according to the rationale behind creation of Pension Funds. As proved by his evidence plaintiff experienced hardship, thus need to be compensated by payments of general damages.

Thus, in totality, plaintiff suit succeeds, partly, thus enter Judgment for the plaintiff as follows: -

- i. Plaintiff to be paid Tshs 776,387.60 by first defendant plus interest of 5% per annum from 2003 when check issued to the date of this judgment 29 June 2022.
- ii. Plaintiff to be paid general damages to the tune of 5,000,000/= Tshs by first defendant.
- iii. Plaintiff to be paid terminal benefit of 13 months by second defendant plus interest of 5% per annum from March 2015 to the date of judgment 29 June 2022.



7

- iv. Interest on decretal sum at the rate of 7% from date of judgment to the date of payment.
- v. Costs of the suit to be borne by the first defendant.
- vi. The rest of claims by plaintiff are dismissed.




Z. G. Muruke

Judge

29/06/2022

Judgment delivered in the presence of Getruda Songoi and Nyambilila Ndoboko State Attorneys for the defendants and Emmanuel Ngongi for the plaintiff.




Z. G. Muruke

Judge

29/06/2022